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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Sheila C. Campbell-Thomson,

Plaintiff,

vs.

Cox Com, Inc., a Delaware Corporation,
d.b.a. "Cox Communications",

Defendant

No.: CV 08-1656-GMS

**REPLY TO DEFENDANT'S
RESPONSE TO
PLAINTIFFS'S MOTION
FOR SUMMARY
JUDGMENT**

This reply memorandum in support of plaintiff's motion for summary judgment, based on Plaintiff's Statement of Facts (PSOF), will be mercifully brief. The defendant's pleadings in this case have already consumed far too many pages containing largely irrelevant facts and arguments to the extent that the fundamental issues and principles in this case have been obscured.

There is no dispute in this case that plaintiff was engaged in protected activity when she raised the issue of unpaid overtime pay at the April 5, 2006 team meeting, and subsequently with Cox officials and with the Department of Labor (PSOF 8-12, 14-15). There is also no dispute about defendant's supervisor calling plaintiff "a f__king bitch" in

1 direct response to her raising the overtime pay issue at the April 5th meeting (PSOF 13).
2 There is also no dispute about plaintiff leaving the meeting to throw up in the restroom in
3 reaction to her supervisor's conduct, which was in response to her objecting to unpaid
4 overtime. (PSOF 13) There is also no dispute about her supervisor threatening to fire her
5 for leaving the meeting. (PSOF 13) There is also no dispute about the fact that
6 approximately one week after the April 5, 2006 meeting plaintiff was reassigned to a new
7 geographical work area that was less desirable than the one she had been assigned to
8 previously. (PSOF 17)

9 It is also undisputed that when plaintiff tried to transfer back to her previous job
10 assignment in Field Operations, she was refused permission to do so. (PSOF 24) This,
11 despite the fact that up to the time of the overtime complaint, plaintiff was considered an
12 outstanding employee who had served her company with distinction and high honors for
13 over 10 years. (PSOF 16) There is also no dispute that three other employees were also
14 fired after raising questions about unpaid overtime for employees who were eligible to
15 receive it. (PSOF 37).

16 Despite these undisputed facts, defendant contends that plaintiff's raising the issue
17 of unpaid overtime had absolutely nothing to do with her termination and despite the fact
18 that the claimed basis for termination was both disputed and refuted by plaintiff. (PSOF 30-
19 35). Recognizing that defendant's state of mind (or anyone's) can not be the subject of
20 objective proof, nevertheless, when one considers the undisputed objective evidence in this
21 case, the defendant's decision to terminate plaintiff clearly appears to be a pretext and an
22 act of retaliation in violation of the F.L.S.A. (29 U.S.C. Sec. 201 et seq.) On this basis,
23 together with all of the other reasons set forth in plaintiff's motion for summary judgment
24 and its supporting statement of facts, plaintiff requests that the Court enter

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27 . . .

1 summary judgment in her favor on the issue of liability and deny defendant's motion
2 for summary judgment.

3 RESPECTFULLY SUBMITTED THIS 12TH day of February, 2010.

4 CHERI L. McCracken, ESQ.

5 /s/ Cheri L. McCracken

6 Cheri L. McCracken
7 2402 North 24th Street
8 Phoenix, AZ 85008
9 Attorney for Complainant

8 Original of the foregoing e-filed
9 this 12th day of February, 2010 with:

10 Clerk of the US District Court
11 400 W. Washington
12 Phoenix, AZ 85003-0001

12 /s/ Fran Townsend